**IN THE SUPREME COURT**
**OF THE STATE OF CALIFORNIA**

| | |
|---|---|
| Alameda County Deputy Sheriff's Association, et al.<br><br>Petitioners & Appellants,<br><br>vs.<br><br>Alameda County Employees' Retirement Assn. and Bd. of the Alameda County Employees' Retirement Assn., et al.,<br><br>Defendants & Respondents,<br><br>Central Contra Costa Sanitary District, Real Party in Interest & Respondent,<br><br>Service Employees International Union, Local 1021, et al.; State of California; and Building Trades Council of Alameda County, et al.,<br><br>Intervenors. | Case No. S247095<br><br>First Appellate District Case No. A141913<br><br>Contra Costa County Superior Court Case No. MSN12-1870<br><br>(Coordinated with Alameda County Superior Court Case No. RG12658890 and Merced County Superior Court Case No. CV003073) |

# PROPOSED *AMICUS CURIAE* BRIEF OF ORANGE COUNTY ATTORNEYS ASSOCIATION & ORANGE COUNTY MANAGERS ASSOCIATION IN SUPPORT OF PETITIONERS

*MARIANNE REINHOLD (106568),
LAURENCE S. ZAKSON (119435) &
AARON G. LAWRENCE (258813),
of REICH, ADELL & CVITAN
A Professional Law Corporation
2670 N. Main Street, Suite 300
Santa Ana, California 92705
Telephone: (800) 386-3860 / Facsimile: (714) 834-0762
marianner@rac-law.com; laurencez@rac-law.com; & aaronl@rac-law.com
Attorneys for *Amici Curiae*

**IN THE SUPREME COURT**
**OF THE STATE OF CALIFORNIA**

| | |
|---|---|
| Alameda County Deputy Sheriff's Association, et al.<br><br>Petitioners & Appellants,<br><br>vs.<br><br>Alameda County Employees' Retirement Assn. and Bd. of the Alameda County Employees' Retirement Assn., et al.,<br><br>Defendants & Respondents,<br><br>Central Contra Costa Sanitary District,<br><br>Real Party in Interest & Respondent,<br><br>Service Employees International Union, Local 1021, et al.; State of California; and Building Trades Council of Alameda County, et al.,<br><br>Intervenors. | Case No. S247095<br><br>First Appellate District Case No. A141913<br><br>Contra Costa County Superior Court Case No. MSN12-1870<br><br>(Coordinated with Alameda County Superior Court Case No. RG12658890 and Merced County Superior Court Case No. CV003073) |

# PROPOSED *AMICUS CURIAE* BRIEF OF ORANGE COUNTY ATTORNEYS ASSOCIATION & ORANGE COUNTY MANAGERS ASSOCIATION IN SUPPORT OF PETITIONERS

*MARIANNE REINHOLD (106568),
LAURENCE S. ZAKSON (119435) &
AARON G. LAWRENCE (258813),
of REICH, ADELL & CVITAN
A Professional Law Corporation
2670 N. Main Street, Suite 300
Santa Ana, California 92705
Telephone: (800) 386-3860 / Facsimile: (714) 834-0762
marianner@rac-law.com; laurencez@rac-law.com; & aaronl@rac-law.com
Attorneys for *Amici Curiae*

## TABLE OF CONTENTS

## TABLE OF AUTHORITIES

**Cases**

**Statutory Authorities**



**Other Authorities**

## I. INTRODUCTION

Petitioners Alameda County Deputy Sheriffs' Association, *et al.* have described the issue in this case as:

> Does the Contracts Clause of the California Constitution require that any modification to public employees' pension benefits resulting in a disadvantage to the employees be accompanied by an offsetting new advantage?

[Petitioners' Opening Brief on the Merits ("ACDSA Opening Brief"), at p. 8.] Intervenor State of California and Real Party in Interest Central Contra Costa Sanitary District (referred to collectively herein, along with the other public entities that have submitted briefing, as the "Public Entity Parties") instead frame this appeal as a narrow examination of particular benefit provisions. [Intervenor and Respondent State of California's Opening Brief on the Merits ("State Opening Brief"), at p. 10; Opening Brief of Central Contra Costa Sanitary District ("CCCSD Opening Brief"), at p. 15-16.]

Proposed *Amici* Orange County Attorneys Association ("OCAA") and Orange County Managers Association ("OCMA") (collectively "*Amici*") agree with Petitioners' framing of the issues. Although this case certainly has practical implications for the parties with respect to the particular pension benefits directly at issue, the "important question of law" which warranted this Court's review, and as to which the lower courts require guidance, is the scope of the limitation(s) on public employers' ability under the Contract Clauses of the California and U.S. Constitutions

to alter their own contractual obligations towards their own employees, particularly with respect to pension benefits. *See* California Rules of Court, Rule 8.500(b)(1).

This brief argues that core constitutional principles—long recognized by the both state and federal courts—require that laws resulting in a constitutionally cognizable impairment of contract rights address a genuine and important public need, be carefully tailored to what is necessary to address that need (with a greater degree of scrutiny when a state's own financial obligations are at stake), and that those harmed be provided with just compensation for that impairment. With respect to pension benefits in particular, the application of these principles requires: (1) that the State's public policy justification for the modification be sufficiently compelling to warrant the degree of impairment it inflicts on employees' reasonable expectations; (2) that the modification be carefully tailored to serve the public policy giving rise to the modification; and (3) that disadvantageous changes in benefits be offset by some comparable new advantage.

## II. IDENTITY AND INTEREST OF THE *AMICI*

OCAA and OCMA are employee organizations, recognized by the County of Orange (the "County") as exclusive bargaining representatives of certain units of County employees pursuant to the Meyers-Milias-Brown

Act ("MMBA") (1968), codified at Gov. Code §§ 3500, *et seq.* OCAA represents employees in the County's "Attorney Unit," consisting of attorneys in the offices of District Attorney, Public Defender, Alternate Defender, Associate Defender, County Counsel, and Child Support Services. OCMA represents managers assigned to the County's various departments and agencies. The employees of both of these bargaining units participate in retirement systems governed by the County Employees Retirement Law ("CERL"), Government Code §§ 31450, *et seq.* The interest of *Amici* in this case derives from their representation of public employees whose pension rights may be affected by the Court's ruling on the scope and application of the vested benefits doctrine, and its application to employees participating in a retirement system governed by the CERL.

The proposed *amici curiae* brief was authored by Marianne Reinhold, Laurence S. Zakson, and Aaron G. Lawrence, of Reich, Adell & Cvitan, A Professional Law Corporation. No party, person, or entity other than the *Amici* made a monetary contribution to fund the preparation of the proposed brief.

## III. ARGUMENT

### A. Applicable Principles

1. The Basic Test Under the Contracts Clauses

In deciding whether a state action is an unconstitutional impairment of contract rights, a court must: (i) determine whether a contractual relationship exists, *United States Trust Co. v. New Jersey* (1977) 431 U.S. 1, at 17-18; (ii) determine whether the state action constitutes a substantial impairment of a contractual relationship, *id.*, at 21-23; and (iii) determine whether the change is justified by a sufficiently weighty public policy purpose and whether the means of accomplishing that purpose was "reasonable and necessary." *Id.*, at 25.

This test arises—as all inquiries into a statute's modification of assertedly vested public employee benefits must—out of the Contract Clause of the U.S. Constitution. U.S. Const. art. I, § 10, cl. 1. This is a significant limitation on sovereign authority, but one with deep and abiding roots in our form of government. Indeed, the *Federalist Papers* described these limits as rooted in "the first principles of the social compact," and as reflecting an important "constitutional bulwark in favor of personal security and private rights." *See* The Federalist No. 44 (James Madison); *see, also, Fletcher v. Peck* (1810) 10 U.S. 87, 137-38.[1] For a comprehensive review

[1] Whatever respect might have been felt for the state sovereignties, it is not to be disguised that the framers of the

of the history and application of the federal Contract Clause, *see Home Building & Loan Assn. v. Blaisdell* (1934) 290 U.S. 398, at 425-29.

California courts must also look to the corresponding Contract Clause of the California Constitution. Cal. Const., art. I, § 9. (These clauses shall be referred to collectively herein as the "Contracts Clauses".) Both the federal and the state constitutional provisions protect tangible contractual rights from impairment, including the rights of parties to contracts with the State itself, although they do so from different starting points. The federal clause places an external limit on state sovereignty with respect to the impairment of contracts, U.S. Const. art. I, § 10, cl. 1 ("No State shall ... pass any ... Law impairing the Obligation of Contracts ..."), whereas the state constitution is an internal limit placed by the people of the State of California on their state's own legislative power, Cal. Const., art. I, § 9 ("A ... law impairing the obligation of contracts may not be passed.").

---

> constitution viewed, with some apprehension, the violent acts which might grow out of the feelings of the moment; and that the people of the United States, in adopting that instrument, have manifested a determination to shield themselves and their property from the effects of those sudden and strong passions to which men are exposed. The restrictions on the legislative power of the states are obviously founded in this sentiment; and the constitution of the United States contains what may be deemed a bill of rights for the people of each state.
>
> No state shall pass any bill of attainder, ex post facto law, or law impairing the obligation of contracts...

*Id.*, at 137-38 (rejecting argument that exception existed "in favour of the right to impair the obligation of those contracts into which the state may enter").

Thus, in enacting the state Contract Clause, the people of the State of California expressly limited their government's legislative authority and removed the tangible impairment of contracts from those "essential attributes of sovereign power" otherwise "reserved by the States to safeguard the welfare of their citizens." *See United States Trust Co., supra*, 431 U.S. at 21.[2]

Without discounting any consequent differences between the two clauses, the tests and analysis applied under each clause is largely the same; and federal jurisprudence is highly relevant in evaluating the scope of vested contractual rights under both Contracts Clauses.[3] *Amici* note that California jurisprudence is, nonetheless, significantly more developed as to the case-specific application of this analysis to the vested contract rights of public employees, particularly with respect to pension benefits.

---

[2] The Public Entity Parties' frequent invocation of these "essential" and "reserved" powers, [*e.g.* State Opening Brief, at 46], reflects a fundamental failure or refusal to acknowledge the role of the Contract Clause of the California Constitution as an elemental, conscious, and express limitation on powers that otherwise would inhere in the State.

[3] Given the consistency between the federal and state standards, *Amici* do not believe that this Court necessarily must determine whether, as the Ninth Circuit stated in *Campanelli v. Allstate Life Ins.* (9th Cir. 2003) 322 F.3d 1086, 1097, "the California Supreme Court uses the federal Contract Clause analysis for determining whether a statute violates the parallel provision of the California Constitution."

2. The Test for Unconstitutional Impairments in the Context of Public Employee Pensions

A substantial body of case law—including a number of decisions of this Court—explains how this constitutional analysis should be applied to modifications of public employee pension benefits. California courts hold that public employees have an implicit contractual right to their promised pension benefits; so, the bulk of California courts' analysis of pension modifications has focused on the second and third prongs of the test articulated in *United States Trust Co.*—that is, on the existence/scope of any impairment and on the State's justification for such impairment, including the tailoring thereof. *See* 431 U.S. at 21-23, 25. On those points, the degree of impairment determines the degree of scrutiny to be applied; and the existence of an offsetting benefit is a central element of the inquiry into the reasonableness and necessity of the modification.

*a. California public employees have an implicit contractual right to their pension benefits*

Under California law, the first prong of the test—whether a contractual relationship exists, *see United States Trust Co.*, *supra*, 431 U.S. at 17-18—is satisfied with respect to public employee pension benefits because California courts have consistently recognized that the exchange that is implicit in a public employer providing pension benefits to its own

employees creates a contractual right.[4] *See, e.g. Kern v. City of Long Beach* (1947) 29 Cal.2d 848, 853 ("[P]ension laws ... establish contractual rights."). Thus, whatever the merit of the Public Entities' contention—that there generally is a presumption against interpreting a statutory scheme as creating contractual rights, [*see, e.g.* Contra Costa Opening Brief, at p. 28-29]— the strong preference under California law for construing public employee pension laws as creating contractual rights to the payment of pension benefits overcomes that presumption.[5] *See id.*; *see, also, Cal. Teachers Ass'n v. Cory* (Ct.App. 3 Dist. 1984) 155 Cal.App.3d 494, 506 ("A statute offering pension rights in return for employee services expresses an element of exchange and thereby implies these rights will be private rights in the nature of contract."); *White v. Davis* (2003) 30 Cal.4th 528, 564-65 ("[A] long line of California cases establishes that with regard to at least certain terms or conditions of employment that are created by statute, an employee who performs services while such a statutory

---

[4] Indeed, California courts presume that, when feasible to do so, laws creating pension benefits should be construed as guaranteeing full payment to those entitled to its benefits. *White v. Davis* (2003) 30 Cal.4th 528; *cf. Board of Administration v. Wilson* (Ct.App. 3 Dist. 1997) 52 Cal.App.4th 1109, 1131 (pension laws imply a vested contractual right to an "actuarially sound" retirement system).

[5] Notably, California is far from alone in regarding public employee pension laws as giving rise to contractual rights. *See generally* Amy B. Monahan, "Public Pension Plan Reform: The Legal Framework," 5 Educ. Fin. & Pol'y 617 (2010) (majority of states examined had adopted contract-based approach to public pensions).

provision is in effect obtains a right, *protected by the contract clause*, to require the public employer to comply with the prescribed condition."); *Lyon v. Flournoy* (Ct.App. 3 Dist. 1969) 271 Cal.App.2d 774, 781 ("California law places earned pension rights of public officers and employees under the protection of the contract clause ...").

Contractual rights to a promised pension may be established not only by the explicit text of the applicable Memoranda of Understanding (MOUs) or statutes, but also from promises implicit therein and from practice, usage, and custom. *See e.g. Board of Administration v. Wilson* (Ct.App. 3 Dist. 1997) 52 Cal.App.4th 1109, 1133 ("[T]he PERS statutes set up a retirement system to pay pension rights of state employees. Actuarial soundness of the system is necessarily implied in the total contractual commitment, because a contrary conclusion would lead to express impairment of employees' pension rights."); *Valdes v. Cory* (Ct.App. 3 Dist. 1983) 139 Cal.App.3d 773, 786 (looking beyond statutory language to determine that "the Legislature intended to create and maintain the PERS on a sound actuarial basis."); *Lyon*, 271 Cal.App.2d at 783 ("The nature and extent of the obligation are ascertained not only from the language of the pension provision, but also from the judicial construction of this or similar legislation at the time the contractual relationship was established."); *see, also, generally, Retired Employees Assn. of Orange County, Inc. v. County of Orange* (2011) 52 Cal.4th 1171 (*REAOC*) ("circumstances

accompanying" statutory framework may create vested rights); *San Luis Obispo Cnty. v. Gage* (1903) 139 Cal. 398, 405 ("contracts may be made or evidenced by a statute, and by conduct ensuing thereupon, as well as by other means of evidence.").[6]

This presumption is well grounded in the very real tradeoffs that public employees make when they pursue careers in the public sector. *See Sonoma County Org. of Public Employees v. County of Sonoma* (1979) 23 Cal.3d 296, 308-09 (noting that fringe benefits "are inextricably interwoven with" wages, which represent "the very heart of an employment contract," and that employees frequently engage in a tradeoff between the two. When an employee accepts public employment, and renders his or her services, he

[6] The Public Entity Parties' erroneously contend that a vested right must be "clearly and unequivocally" set forth in the relevant statute in order to be vested and subject to the "reasonableness" test. [*E.g.* Contra Costa Opening Brief, at 44 (definition of "compensation earnable" assertedly too "general[]" and not "'clear' and 'unequivocal'" so "[a]ccordingly, there is no vested right."); Merced Answer Brief, at 45 (if statutory language "so uncertain that it did not create a reasonable reliance interest ..." impairment is necessarily "minimal" so "there was no need to provide any comparable new advantages.").] As the cited cases demonstrate, vesting is not merely a matter of strictly construing the clear and unequivocal promises set forth in the express language of a statute, and potentially requires the consideration of other factors affecting employees' reasonable expectations. *San Luis Obispo Cnty. v. Gage* (1903) 139 Cal. 398, 405 ("contracts may be made or evidenced by a statute, and by conduct ensuing thereupon, as well as by other means of evidence."). Moreover, this argument conflates the clarity of the promise and the reasonableness and necessity of the impairment. Once an impairment of contractual right is found, the "reasonableness"/necessity test articulated in *Allen v. City of Long Beach* (*Allen I*) (1955) 45 Cal.2d 128, 131, must be applied without regard to the clarity of the contractual language giving rise to that right.

or she does so reasonably expecting to receive not only wages, but benefits, including deferred benefits, under the terms promised by the employer); *Claypool v. Wilson* (Ct.App. 3 Dist. 1992) 4 Cal.App.4th 646, 662 ("The contractual basis of a pension right is the exchange of an employee's services for the pension right offered by the statute."); *see also Dryden v. Board of Pension Comm'rs* (1936) 6 Cal.2d 575 (pension provisions of a city charter "are an integral portion of the contemplated compensation set forth in the contract of employment between the city and a [city employee], and are an indispensable part of that contract ..."). It also reflects the economic reality that public employees make an explicit tradeoff by choosing the "job security and employment benefits enjoyed by public employees" rather than the "higher wages" available in the private sector. *See generally Lusardi Construction Co. v. Aubry* (1992) 1 Cal.4th 976, 987.

Public sector collective bargaining reflects this same dynamic. Thus, during collective bargaining, each economic item serves as a lever against everything else in the context of a broad give-and-take negotiation over the terms and conditions of employment. When the bargaining parties negotiate a Memorandum of Understanding (MOU), if they understand a retirement benefit to be guaranteed, it is accounted for and valued in a certain way during that give-and-take. *Amicus curiae* OCAA explicitly engaged in this sort of tradeoff in negotiating its 2004-2007 MOU with the County of Orange ("County"). There, OCAA made significant sacrifices in exchange

for the County's agreement to an enhanced "2.7% at 55" pension benefit formula.[7] Employee organizations routinely engage in this sort of long-term sacrifice of other priorities to obtain pension concessions. It is extremely disruptive of reasonable expectations for a public employer to extract such concessions and, then, to unilaterally change the terms of a pension benefit.

Thus, given that pension benefits are implicitly part of the contractual exchange at the heart of public employment, it is the public employer's burden to demonstrate that a particular pension benefit is not part of this contractual exchange. Where this cannot be done, the inquiry advances to the next step of the analysis.

---

[7] OCAA expressly engaged in the following tradeoffs to obtain this enhancement:

- Elimination of Preferred Provider Medical coverage;
- Reduction in lifetime medical cap from $2,000,000 to $1,000,000;
- Increased co-pays for medicine and office visits;
- Increased medical premium payments, including a 5% premium pick up by single employees who had previously never contributed;
- Elimination of the County's $100/month contribution to employee 401a account;
- Reduction in Attorney Optional Benefit from $2,700 to $1,500;
- Payment of the difference between the employees' normal contribution rate calculated pursuant to Government Code sections 31621.5 and 31621, and section 31621.8;
- An additional employee contribution to the retirement system in an amount equal to 0.54% of compensation earnable;
- Elimination of lump sum payment worth approximately 1% of salary; and
- Foregoing salary increases entirely for two years, with a salary reopener in lieu of a fixed increase in the final period of the agreement.

*b. California law looks to the parties' reasonable expectations in determining whether, and to what extent, there has been a cognizable impairment*

The second prong of the test articulated in *United States Trust Co.*—whether and to what extent a constitutionally cognizable impairment of contractual rights has occurred, *see* 431 U.S. at 21-23—turns upon the degree to which a modification of pension rights has disrupted the reasonable expectations of the contracting parties. The Alameda County Deputy Sheriff's Association briefings correctly identify the applicable standard under *Allen v. Board of Administration* (*Allen II*) (1983) 34 Cal.3d 114, 124. Where public employees' deferred compensation is at issue, the guiding factor in determining where a particular impairment lies on this spectrum is the "reasonable pension expectations" of those public employees. *Id.*, at 124, *citing El Paso v. Simmons* (1965) 379 U.S. 497.[8]

---

[8] *See also Allied Structural Steel Co. v. Spannaus* (*Spannaus*) (1978) 438 U.S. 234, 245 ("The severity of an impairment of contractual obligations can be measured by the factors that reflect the high value the Framers placed on the protection of private contracts. Contracts enable individuals to order their personal and business affairs according to their particular needs and interests. Once arranged, those rights and obligations are binding under the law, and the parties are entitled to rely on them."); *see, also, Balt. Teachers' Union v. Mayor & City Council of Balt.* (4th Cir. 1993) 6 F.3d 1012 ("[W]here the right abridged was one that induced the parties to contract in the first place, or where the impaired right was one on which there had been reasonable and especial reliance.").
Notably, employees' reasonable expectations are similarly important in evaluating an asserted comparable new advantage. *See Frank v. Board of Administration* (Ct.App. 3 Dist.1976) 56 Cal.App.3d 236, 244 (modification providing new advantage must not "frustrate the reasonable expectations of the parties to the contract of employment.").

As this Court noted 40 years ago, a public employee's reasonable expectations about his or her promised pension "are measured by benefits which are in effect not only when employment commences, but which are thereafter conferred during the employee's subsequent tenure." *Betts v. Board of Administration* (1978) 21 Cal.3d 859, 866. This inquiry—as with other claims of impairment of constitutional rights—must, by its nature, be conducted with a view towards the concrete expectations of the individuals or groups whose pension rights have been impacted by the change. Thus, scrutiny of pension modifications must be individually-focused—that is, it must look to the deprivation suffered by particular employees or particular classes of employees. *Abbott v. City of Los Angeles* (1958) 50 Cal.2d 438, at 449 ("[I]t is advantage or disadvantage to the particular employees whose own contractual pension rights, already earned, are involved which are the criteria by which modifications to pension plans must be measured"); *see, e.g. Miller v. State of California* (1977) 18 Cal.3d 808, 811 (no actual modification to plaintiff's pension rights had occurred, so no need for analysis under *Allen I* or *Abbott*); *accord Packer v. Board of Retirement* (1950) 35 Cal.2d 212 (following individualized finding that officer had received an offsetting advantage, the Supreme Court found permissible a pension modification which permitted a "widow's pension" only if the husband agreed to take a lesser pension for himself).[9] While the adverse

[9] The Public Entity Parties baldly assert that this individualized inquiry

effect must be analyzed in terms of its effect on individuals, individual public employees do not exist in a vacuum and the modification may affect them as part of a collective bargaining unit in their collective relationship with their public employer rather than in their capacity as individuals.[10]

Although the Public Entity Parties posit that the analysis requires placement of the impairment into one of two clear analytical categories—with substantial impairments subject to exacting scrutiny, on the one hand, and "mild" or "hardly burdensome" impairments subject to no scrutiny, on the other [*e.g.* Contra Costa Opening Brief, at p. 54; State Opening Brief, at

---

must necessarily be subjective and "onerous," and contend that it would lead to "inconsistency in the application" of statutes among different employees. [E.g. Contra Costa County Opening Brief, at p. 53-54; Merced County Answer Brief, at p. 53.] An analysis focused on "*reasonable* pension expectations," *Allen II*, 34 Cal.3d 114, however, requires an *objective* look at how particular modifications affect matters that are of real world, objective value to particular classes of employees (as opposed to the personal subjective feelings of particular individuals). Where a facially uniform statute is found to impermissibly impair the rights of certain classes of employees under this standard, it is for the reviewing court to determine whether the provision is invalid in its entirety, or whether the impairment may be remedied by enjoining its application as to particular adversely affected groups, *e.g. Protect Our Benefits v. City and County of San Francisco* (Ct.App. 1 Dist. 2015) 235 Cal.App.4th 619 (modification could not lawfully be applied to class of employees but could be applied to another based upon retirement date), or individuals. *E.g. Betts*, *supra*, 21 Cal.3d at 868 (ordering issuance of writ of mandate directing that modification not be applied to petitioner).

[10] Thus, public employees often deal with their employer collectively through the meet and confer process under such statutes as the Meyers-Milias-Brown Act, Gov. Code Section 3500 *et seq.* And the disadvantage they experience as a result of the modification of a pension system may be as a result of tradeoffs made in the compensation package as part of that process. *See* discussion *supra* at Section A(2)(a).

p. 48.]—courts have recognized that impairments of contractual rights may exist in varying degrees along a spectrum. *E.g.* *Allied Structural Steel Co. v. Spannaus* (*Spannaus*) (1978) 438 U.S. 234, 244-45 (describing "minimal," "substantial," and "severe" impairments).

c. *When a public employer specifically modifies a public employee's pension benefit, the state's self-interest triggers stringent scrutiny of the purpose and appropriate tailoring, including an offsetting benefit*

The final—"reasonable and necessary"—prong of the *United States Trust Co.* analysis asks whether the modification is based upon a sufficiently weighty public purpose and is appropriately tailored to serve that purpose. *See* 431 U.S. at 25.[11] The state's level of economic self-interest in the changes and the scope of the impairment of contractual rights are the factors which determine the stringency of that scrutiny. Where what is at issue is not a law of general application with an incidental effect on public employee pension rights, but, rather, a law aimed directly at altering a public employee's contractual pension rights—an issue in which the State has an inherent self-interest—California utilizes the demanding test for

[11] *See also id.*, at 22 ("Legislation adjusting the rights and responsibilities of contracting parties must be ... of a character appropriate to the public purpose justifying its adoption."), *citing* *Home Building & Loan Assn. v. Blaisdell* (1934) 290 U.S. 398, at 445-47; *see also* *Allied Structural Steel*, *supra*, 438 U.S. at 245 (subjecting impairments of contractual obligations to "a careful examination of the nature and purpose of the state legislation.").

reasonableness and necessity articulated in *Allen v. City of Long Beach* (*Allen I*) (1955) 45 Cal.2d 128, 131:

> To be sustained as reasonable, alterations of employees' pension rights must bear some material relation to the theory of a pension system and its successful operation, and changes in a pension plan which result in disadvantage to employees should be accompanied by comparable new advantages.

Under this test, there must be a legitimate public purpose materially related to the theory and successful operation of the pension system. The relationship between the purpose and the change must be substantial—or, as stated in *Allen I,* material—and the change itself must be necessary to achieve that permissible public purpose. Implicit in the requirement of necessity is that the change has been carefully tailored to advance the successful operation of the system—not to achieve some other purpose, such as saving money for the public employer at the expense of the employee or making the pension system more politically attractive. Viewed in this light, an offsetting benefit is an essential part of the determination as to whether the statutory change is appropriately tailored to achieve its purpose and, therefore, is mandatory.

It has long been acknowledged that, when the state is exercising its power to impair its own contractual obligation, the scrutiny of its justification for the change and how narrowly the change is tailored to vindication of that purpose is necessarily heightened. *See United States Trust Co.*, *supra*, 431 U.S. at 17, *citing Fletcher v. Peck* (1810) 10 U.S. 87;

*Dartmouth College v. Woodward* (1819) 17 U.S. 518. Such heightened scrutiny is particularly important where the state's ***financial*** self-interest is at issue:

> [A] governmental entity can always find a use for extra money, especially when taxes do not have to be raised. If a State could reduce its financial obligations whenever it wanted to spend the money for what it regarded as an important public purpose, the Contract Clause would provide no protection at all . . . . [A] State cannot refuse to meet its legitimate financial obligations simply because it would prefer to spend the money to promote the public good rather than the private welfare of its creditors . . . . [A] State is not completely free to consider impairing the obligations of its own contracts on a par with other policy alternatives. Similarly, a State is not free to impose a drastic impairment when an evident and more moderate course would serve its purposes equally well.

*United States Trust Co.*, *supra*, 431 U.S. at 26, 29-31.

The reduction in pension benefits available to public employees is an inherently self-interested act with a predictable effect on the State's bottom line. Accordingly, it is necessarily subject to this higher degree of scrutiny. The Public Entity Parties incorrectly contend that—because the present modifications relate to the financial obligations of *counties* towards *county* employees—the *state* Legislature's conduct in passing the present statute should not be regarded as a self-interested modification subject to this heightened degree of scrutiny. [*E.g.* State Opening Brief, at p. 50-51; Contra Costa Answer Brief, at p. 28-29.] However, this position is entirely at odds with this Court's prior case law, which applied exacting scrutiny—

and ultimately overturned—a prior attempt by the State to impair counties' contractual obligations towards their employees. *Sonoma County Org. of Public Employees v. County of Sonoma* (1979) 23 Cal.3d 296. At issue in the *Sonoma County* case was a state law that placed limits on the counties' payment of cost-of-living increases to county employees, assertedly justified by a fiscal crisis that resulted from the passage of Proposition 13. *Id.*, at 302-04.[12] The Court expressly treated this state statute as a self-interested modification and, as a consequence, subjected it to greater scrutiny. *Id.*, at 307 ("In [*United States Trust Co.*], as here, the government attempted to impair not contracts entered into between private parties, but obligations of the public entity itself."). The Court ultimately found the State's claims of fiscal emergency to be overblown and its impairment of county contracts to be unconstitutional. *Id.*, at 312-14.[13]

*Sonoma County* was correct in its recognition that the State has a very real self-interest in the funding of its counties. Under our state

---

[12] The Legislature was expressly motivated by concern for the finances of ***local entities***, including counties, having relied upon an analysis warning that "local entities would lose $7 billion in property tax revenues, representing an average reduction of 57 percent of such revenues previously projected. As a result, local agencies would suffer an average 22 percent reduction in the overall revenue which had been anticipated for the 1978-1979 fiscal year." *Id.*, at 309-10.

[13] The Court also cited favorably—but did not expressly rule upon—the argument that the state may not rely upon a fiscal emergency "created by the state itself" through its own tax and budgeting actions to justify an impairment of contract. *Id.*, at 313, *citing Hubert v. New Orleans* (1909) 215 U.S. 170; *Wolff v. New Orleans* (1880) 103 U.S. 358.

Constitution, counties "are legal subdivisions of the State." Cal. Const., art. XI, § 1;[14] *see, generally, e.g., Younger v. Bd. of Supervisors* (Ct.App. 4 Dist.1979) 93 Cal. App. 3d 864, 870 ("Since counties constitute merely political subdivisions of the state ... they have independently only such legislative authority that has been expressly conferred by the Constitution and laws of the state."); *County of Los Angeles v. County of Orange* (1893) 97 Cal. 329, 331 (counties "are but parts of the machinery employed in carrying on political affairs of the State."); *Reclamation District v. Superior Court* (1916) 171 Cal. 672, 680 (a county "is a mere political agency of the state, that it holds its property on behalf of the state for governmental purposes, and that it has no private proprietary interest in such property as against the state.") Additionally, county and State governments are inextricably intertwined with respect to their finances.[15]

Another factor influencing the degree of scrutiny applied to a state's reasoning for impairing the obligations of contract—in addition to the state's level of self-interest—is the severity of the impairment:

---

[14] *Compare* Cal. Const., art. XI, § 1 (which designates counties as "legal subdivisions of the State") *with* Cal. Const., art. XI, § 2 (which does not do the same for cities). Similarly, counties, unlike cities "enjoy[] the same immunity from suit and from liability as the State." *Gayer v. Whelan* (Ct.App. 4 Dist.1943) 60 Cal. App.2d 616.

[15] *See generally* California Institute for Local Government, "Understanding the Basics of County and City Revenues" (2013), *available at* http://www.pvestates.org/Home/ShowDocument?id=3124.

> The severity of the impairment measures the height of the hurdle the state legislation must clear. Minimal alteration of contractual obligations may end the inquiry at its first stage. Severe impairment, on the other hand, will push the inquiry to a careful examination of the nature and purpose of the state legislation.

*Allied Structural Steel Co. v. Spannaus* (1978) 438 U.S. 234, 244-45; *see also Valdes v. Cory*, *supra*, 139 Cal.App.3d at 789; *Board of Administration v. Wilson* (Ct.App. 3 Dist. 1997) 52 Cal.App.4th 1109, 1154.[16] Notably, this inquiry into the level of impairment must be conducted on an individualized basis—that is, a court must look at the particular impairments suffered by the very employees who are adversely affected.[17]

---

[16] *Cf. Roberts v. United States Jaycees* (1984) 468 U.S. 609 (anti-discrimination law found lawful where interferences of associational freedoms comparatively slight—no "serious burdens on the male members' freedom of expressive association"—and the law was appropriately tailored and justified by sufficient governmental interest).

[17] While *Amici* disagree with the overall holding, on this particular point, the First Appellate District was correct here in holding that the impairment analysis:

> . . . must focus on the impacts of the identified disadvantages on the specific legacy members at issue... And, if the justification for the changes is the financial stability of the specific CERL system, the analysis must consider whether the exemption of legacy members from the identified changes would cause that particular CERL system to have "difficulty meeting its pension obligations" with respect to those members... In this regard, mere speculation is insufficient... Moreover, generally speaking "[r]ising costs alone will not excuse the city from meeting its contractual obligations, the consideration for which has already been received by it." ... Under this analysis, and contrary to the holding in *Marin*, the

Contrary to the contention of the Public Entity Parties, the level of scrutiny applied to an asserted impairment of a public employee's pension rights is not determined by whether the changes are "prospective only." Public Entity Parties attempt to support this contention by relying on language cherry picked from inapplicable case law from other jurisdictions,[18] or that deals with compensation other than promised pension benefits.[19] In contrast, under California law, it is recognized that "although the Legislature may reduce" future compensation of public employees in some respects,[20] "public employee pension rights involve constitutionally

---

> fact that the modifications here at issue may be relatively modest looking at a system's pension costs as a whole may actually argue in favor of finding an impairment, as the continuation of such benefits solely for legacy members may not have a significant impact on the system, especially if such benefits have been already actuarially accounted for and treated as pensionable.

*Alameda County Deputy Sheriff's Ass'n v. Alameda County Emples. Ret. Ass'n & Bd. Emples. Ret. Ass'n* (Ct.App. 1 Dist. 2018), 19 Cal.App.5th 61, 123; *see also id.*, at 122 (criticizing *Marin* decision for "impermissibly focusing on the unfunded pension liability crisis in general" instead of "specifically weigh[ing] the financial implications for Marin CERA if legacy members were exempted from those modifications ...").

[18] *E.g.* State Opening Brief, at p. 43-44 (*citing Maryland State Teachers Ass'n v. Hughes* (D. Md. 1984) 594 F.Supp. 1353; *Taylor v. City of Gadsen* (11th Cir. 2014) 767 F.3d 1124); Contra Costa Opening Brief, at p. 55 (*citing Taylor, supra*; *Scott v. Williams* (Fla. 2013) 107 So.3d 379).

[19] *E.g.* State Opening Brief, at p. 43-44 (*citing U.S. v. Laroinoff* (1977) 431 U.S. 864 (Congress may prospectively reduce pay for future employment)).

[20] "[A] a state (or its local subdivisions) has the power at any time to create, alter or abolish state or local public offices, and thereby reduce the affected

protected obligations. 'Pension rights ... are deferred compensation earned immediately upon the performance of services for a public employer '[and] cannot be destroyed . . . without impairing a contractual obligation. . .'" Legislature v. Eu (1991) 54 Cal.3d 492, 533, *quoting* Miller v. State of California (1977) 18 Cal.3d 808.[21]

Also contrary to the contentions of the Public Entity Parties, [e.g. Contra Costa Opening Brief, at p. 54], the finding of a minimal or technical impairment does not ***necessarily*** end the inquiry. On the contrary, Spannaus and Valdes state only that a finding of "minimal" impairment "may" do so. "The concept of 'minimal impairments' has no proper application as a vague license for the state to impair its obligation so long as it does so only "a little bit." Cal. Teachers Ass'n v. Cory (Ct.App. 3d Dist. 1984) 155 Cal.App.3d 494, 511. Rather, the concept is more properly viewed as a way of determining if the change is necessary and carefully tailored to its purpose. As the Third Appellate District observed, although "case law has given rise to the concept of permitted impairments as 'minimal impairments,'" this is nothing more than an evaluation of whether

---

officers' salaries or other compensation ..." Legislature v. Eu (1991) 54 Cal.3d 492, 533.

[21] Those terms to which employees obtain a vested right include not only those "which are in effect not only when employment commences," but also those "which are thereafter conferred during the employee's subsequent tenure." See Betts v. Board of Administration (1978) 21 Cal.3d 859, 866. See, also, Kern, 29 Cal.2d at 855 (looking to terms in effect "during any particular period in which [the employee] serves.").

the impairment meets the test of necessity, or, put another way, whether "only the minimal impairment needed to attain the tendered legitimate public end has been visited upon the contracting parties." *Id.*

So, for example, a law of general application directed at some broader public good that has only a narrow incidental effect on private contract rights—particularly where the State does not have a clear financial stake—may, indeed, require no further inquiry under *Spannaus* and *Valdes*. However, a law directly targeted at reducing public employee pension benefits—something that directly affects the State's bottom line—must still demonstrate a legitimate justification and careful tailoring, regardless of whether the State regards the overall dollar value of that impairment as "minor." Laws targeting pension benefits for more "severe" impairments face an even greater "hurdle." *See Spannaus*, 438 U.S. at 244-45.

In this context, comparable offsetting advantages are a critical part of the tailoring in which the State ***must*** engage to satisfy the reasonableness test or, as the *Allen II* Court put it:

> [A]ny modification of vested pension rights must be reasonable, must bear a material relation to the theory and successful operation of a pension system, and, when resulting in disadvantage to employees, ***must be accompanied*** by comparable new advantages.

34 Cal.3d at 120 (*emphasis added*). This formulation of the rule as mandatory is not a result of sloppy draftsmanship, but, rather, an accurate reflection of a consistent constitutional standard. While the exact phrasing

has varied, courts have repeatedly used mandatory language to describe the need for a comparable offsetting advantage. *See, e.g. Abbot v. Los Angeles* (1958) 50 Cal.2d 438, 454 ("[T]he substitution of a fixed for a fluctuating pension is ***not permissible unless accompanied*** by commensurate benefits..."); *Legislature v. Eu* (1991) 54 Cal.3d 492, 529 ("[T]he state ***cannot*** ... abandon that plan as to incumbent legislators ***without providing them comparable new benefits***."); *Phillis v. City of Santa Barbara* (Ct.App. 2 Dist. 1964) 229 Cal.App.2d 45, 66 ("There is no merit in respondents' claim that the rule of the *Allen* and *Abbott* cases, ***requiring equal advantages*** to offset disadvantageous amendments to a pension plan, is confined in its application to employees who have fully earned their pension."].); *In re Retirement Cases* (Ct.App. 1 Dist. 2003) 110 Cal.App.4th 426, 448 (disadvantageous changes "***must*** be accompanied by comparable new advantages"); *Pasadena Police Officers Assn. v. City of Pasadena* (Ct.App. 2 Dist. 1983) 147 Cal.App.3d 695, 703 ("[C]hanges detrimental to the employee ***must be offset*** by comparable new advantages.") (*all emphasis added*).

This approach is also consistent with longstanding principles articulated in federal jurisprudence. Because "[c]ontract rights are a form of property," under the Takings Clause of the Fifth Amendment,[22] they only

[22] U.S. Const., amend. V ("[N]or shall private property be taken for public use without just compensation.").

may "be taken for a public purpose ***provided that just compensation is paid***." United States Trust Co., supra, 431 U.S. at 19 n.16 (*emphasis added*); see also West River Bridge Co. v. Dix (1848) 47 U.S. 507, 538 (exercise of state power to appropriate property, with just compensation, is not unconstitutional impairment of contract); see also Cal. Const., art. I, § 19 ("Private property may be taken or damaged for public use only when just compensation ... has first been paid to, or into the court for, the owner."). Thus, public employees' contractual right to their promised pension benefits is protected both as a property right[23] and under the Contracts Clause.[24]

### B. California Courts' Application of These Principles

Prior to the *Marin* decision and that of the lower court here, California courts had consistently applied these principles to protect public employee pensions against constitutionally cognizable impairments without an

---

[23] In re Marriage of Brown (1976) 15 Cal.3d 838, 845 ("Since pension benefits represent a form of deferred compensation for services rendered ... the employee's right to such benefits is a contractual right, derived from the terms of the employment contract. Since a contractual right is ... a form of property (see Civ. Code, § 953; Everts v. Will S. Fawcett Co. (1937) 24 Cal.App.2d 213, 215 [74 P.2d 815]), ... an employee acquires a property right to pension benefits when he enters upon the performance of his employment contract.").

[24] See, e.g. Kern, supra, 29 Cal.2d 848.

appropriately compelling public purpose and an offset in the form of a new comparable advantage.

1. Constitutionally-Cognizable Impairments

The severity of an impairment of a public employee's constitutionally protected contractual right to pension benefits turns upon the degree to which the modification affects the parties' reasonable expectations. *See generally* *Allen II*, *supra*, 34 Cal.3d at 124, *quoting* *El Paso v. Simmons* (1965) 379 U.S. 497. Public employees unquestionably have an expectation (and therefore contractual right) to compensation earned through services rendered, *see* *Mississippi ex rel. Robertson v. Miller* (1928) 276 U.S. 174, 178-79, and California jurisprudence correctly recognizes pension benefits as a critical part of that exchange, such that modifications of those pension benefits may severely impair employees' vested pension rights.

In *Int'l Ass'n of Firefighters v. City of San Diego* (*IAF*) (1983) 34 Cal.3d 292, this Court surveyed a series of cases[25] in which modifications to pension benefits were found to be unconstitutional impairments of employees' contract rights. The modifications in these cases ranged from total elimination of pension rights, *see* *Kern*, 29 Cal.2d at 854-55, to lesser

[25] Specifically, *Betts v. Board of Administration* (1978) 21 Cal.3d 859; *Kern v. City of Long Beach* (1947) 29 Cal.2d 848; *Allen v. City of Long Beach* (1955) 45 Cal.2d 128; and *Abbott v. City of Los Angeles* (1958) 50 Cal.2d 438.

changes involving the replacement of fixed formulas with "fluctuating" ones. *See Allen I*, 45 Cal.2d at 131-33; *Abbott*, 50 Cal.2d at 455, 451; and *Betts*, 21 Cal.3d at 862. The Court noted:

> What distinguishes each of these cases from the one before us is the nature of the contractual rights which became vested in plaintiff's members upon their acceptance of employment. In [these] cases ... employees' vested contractual rights were modified by amendment of the controlling provisions of the retirement system in question to reduce (or abolish) the net benefit available to the employees.

*IAF*, *supra*, 34 Cal.3d at 302.[26]

Thus, the proper inquiry is into whether—relative to the pension benefits in place at the commencement of employment (plus later enhancements)—there has been meaningful derogation from the promised benefit—or as the *IAF* court put it a "reduc[tion] [to] ... the net benefit available to the employees." *Id.*, at 302. If so, there has been a constitutionally-cognizable impairment, and the public employer must satisfy the reasonableness/necessity test articulated in *Allen I* (including by providing a comparable offsetting benefit). As discussed, that the impairment is assertedly "minor" does not necessarily mean that it is not cognizable; instead, this goes to the level of scrutiny applied to the purpose and tailoring.

---

[26] This is consistent with the U.S. Supreme Court's recognition that an impairment need not result in the complete destruction of a contract to be unconstitutional. *See Home Building & Loan Assn. v. Blaisdell* (1934) 290 U.S. 398, at 431 ("impairment ... has been predicated of laws which without destroying contracts derogate from substantial contractual rights.").

It is well-recognized that a particular pension benefit is not set in stone. As the Court observed in *Kern*:

> [P]ension systems must be kept flexible to permit adjustments in accord with changing conditions and at the same time maintain the integrity of the system and carry out its beneficent policy... [A]n employee may acquire a vested contractual right to a pension but that this right is not rigidly fixed ...

29 Cal.2d at 854–55.[27] However, this flexibility is limited and it does ***not*** translate into the ability to freely make meaningful reductions in net pension benefits so long as they do not destroy the pension benefit altogether. *See Sonoma County Organization of Public Employees v. County of Sonoma* (1979) 23 Cal.3d 296, 305 ("[I]f the contract clause is to have any effect, it must limit the exercise of the police power to some degree. Our inquiry, then, concerns not whether the state may in some cases impair the obligation of contracts, but the circumstances under which such impairment is permissible.").[28] As such, the Public Entity Parties err in suggesting that the flexibility is plenary, based upon broad appeals to

---

[27] This is consistent with federal Contracts Clause jurisprudence, which also recognizes that the prohibition on impairment of contract "is not an absolute one and is not to be read with literal exactness like a mathematical formula." *Home Building & Loan Assn. v. Blaisdell* (1934) 290 U.S. 398, 428.

[28] *See also Interstate Marina Dev. Co. v. County of L.A.* (1984) 155 Cal.App.3d 435, 448 (acknowledging the State's general police power "to achieve the legitimate purpose of promoting the welfare of its people," but recognizing that "[t]he state cannot use the police power to avoid meeting its financial obligations.").

"essential powers" and police powers and the reference in *Betts*, *supra*, 21 Cal.3d at p. 863, to the right to "a substantial or reasonable pension." [*E.g.* State Opening Brief, at p. 13, 42, 47-49.]

Rather, in practice, California courts have afforded this "flexibility" sparingly to circumstances where changes have not eroded the net benefit amount that public employees reasonably expected to receive. For example, in *Allen II*, the Court found no cognizable impairment because retirees could not "reasonably" "expect under the terms of their employment contract to obtain retirement allowances computed on the basis of the unique salary increase accomplished by the constitutional revision of 1966 which expressly negated such expectations." 34 Cal.3d at 124-25. Similarly, in *Lyon v. Flournoy* (Ct.App. 3 Dist. 1969) 271 Cal.App.2d 774, the court acknowledged the power to make "limited changes," subject to the *Allen I* reasonableness test. *Id.*, at 782. It concluded that the use of a pension benefit cost-of-living formula for pre-1967 legislators and their decedents not tied to current legislator salaries was not an impairment of contract rights where the pre-1967 legislators' reasonable expectations "had ***no relation*** to the real theory and objective" of the higher formula, and that cost-of-living formula "preserved the basic character of the earned benefit but withheld a windfall ***unrelated to its real character***." *Id.*, at 787 (*emphasis added*); *see also Pasadena Police Officers Assn. v. City of Pasadena* (Ct.App. 2 Dist. 1983) 147 Cal.App.3d 695 (ability of board to

change actuarial assumptions did not impair vested rights because it had been contemplated "at all pertinent times").

2. Reasonableness of Asserted Justification

Once it is established that there has been an impairment of a contract right, the inquiry turns to whether the modification is justified by a sufficient policy purpose and whether the means of accomplishing that purpose was "reasonable and necessary." *United States Trust Co.*, *supra*, 431 U.S. at 25. In the pension benefit context, this requires a showing that the modification "must bear some material relation to the theory of a pension system and its successful operation," and that an offsetting new advantage has been provided. *See Allen I*, 45 Cal.2d at 131. Notably, however, despite the presumption of constitutionality attaching to statutes, "complete deference to a legislative assessment of reasonableness and necessity" is not appropriate. *See Valdes*, *supra*, 139 Cal.App.3d at 790. Thus, in *Olson v. Cory* (1980) 27 Cal.3d 532, 539, the Court scrutinized the State's asserted policy justification and determined that the State had offered "no reason or justification for the state action ..." Accordingly, the court overturned legislation purporting to limit cost-of-living increases previously provided for judicial salaries. *Id.* Similarly, in *Sonoma County*, *supra*, 23 Cal.3d at 312-14, this Court found the State's asserted policy justification (a claimed fiscal crisis resulting from the passage of

Proposition 13) to be overstated. Moreover, even when the justification exists and is found to be legitimate, the analysis is not over. Rather, at that point, the focus turns on whether the change is properly tailored to the need—that is, whether it is reasonable and necessary, an analysis that requires a new comparable advantage.

3. The Necessity of an New Comparable Advantage

An offsetting benefit is a critical—and consistently dispositive—component of the reasonableness analysis of any reduction in pension benefits. For example, in *Abbot v. Los Angeles* (1958) 50 Cal.2d 438, this Court, in finding the impairment there impermissible, stated, "the substitution of a fixed for a fluctuating pension is not permissible unless accompanied by commensurate benefits—benefits which are not shown to have been granted in the present case." Similarly, in *Chapin v. City Commission of Fresno* (Ct.App. 4 Dist. 1957) 149 Cal.App.2d 40, 44, the court explained its invalidation of the pension benefit modification by stating,

> In the instant case it is clear that the change in the method of computing benefits ... results in a substantial disadvantage and detriment to him, as is apparent from a computation of the trial court in its findings. It is also apparent that such disadvantage and detriment are not accompanied by comparable new advantages.

*Accord Betts v. Board of Administration* (1978) 21 Cal.3d 859 (change from fluctuating to fixed indexing lacked comparable new advantage);

*Pasadena Police Officers Assn.*, *supra*, 147 Cal.App.3d 695 (COLA changes invalid due to lack of comparable new advantages); *Teachers' Retirement Bd. v. Genest* (Ct.App. 3 Dist. 2007) 154 Cal.App.4th 1012, 1039 (vested rights impaired because law "does not compensate the members for this increased risk or provide a comparable new advantage ..."); *Protect Our Benefits v. City and County of San Francisco* (Ct.App. 1 Dist. 2015) 235 Cal.App.4th 619, 630 ("This diminution in the supplemental COLA cannot be sustained as reasonable because no comparable advantage was offered to pensioners or employees in return"); *Wisley v. San Diego* (Ct.App. 4 Dist. 1961) 188 Cal.App.2d 482 (increases in employee contribution rate unreasonable because unaccompanied by any new advantage).[29]

Other courts have found the presence of a comparable new advantage dispositive in favor of an impairment. *E.g. Lyon v. Flournoy* (Ct.App. 3d Dist. 1969) 271 Cal.App.2d 774 (change where one form of pension indexing was "substituted for another" was lawful because it provided comparable new advantages); *Claypool v. Wilson* (Ct.App. 3 Dist. 1992) 4 Cal.App.4th 646, 669 ("the new supplemental Cola program provides an obvious new advantage for present employees ..."); *City of*

[29] Note that, in keeping with the requirement of an individualized analysis, the comparable new advantage must also be individualized and available to the same group on whom the disadvantages are placed. *See Abbot*, *supra*, 50 Cal.2d 438.

*Downey v. Board of Administration* (1975) 47 Cal.App.3d 621, 632 ("the advantages to the members of the system ... outweigh the disadvantages ... when considered from the individual viewpoints of the members").

Contra Costa's attempted reliance, [Contra Costa County Answer Brief, at p. 24], on *Hipsher v. Los Angeles County Employees Retirement Association* (Ct.App. 2 Dist. 2018) 24 Cal.App.5th 740—for the proposition that offsetting benefits are not generally required when a statutory change alters a pension benefit—is misplaced. First, *Hipsher* dealt with the mandate for an offsetting "comparable new advantage" not as a general rule, but, rather, solely in the context of whether the Legislature was prohibited from modifying a pension benefit "no matter the malfeasance" of the retiring employee. In that context, *Hipsher* opined that a "literal and inflexible" reading of the comparable new advantage language would be "anomalous." 24 Cal.App.5th at 754. Second, *Hipsher*'s determination that a forfeiture of a pension benefit where the employee engaged in job-related criminal misconduct was not constitutionally impermissible was also based on its findings, *citing MacIntyre v. Retirement Board of San Francisco* (Ct.App. 1 Dist. 1941) 42 Cal.App.2d 734, 735, that job-related misconduct undercut the consideration giving rise to the employee's entitlement to a full pension[30] and the great deference

[30] *Hipsher*, 24 Cal.App.5th at 754 ("[I]t is assumed that upon acceptance of a position as an officer or employee of a governmental agency, an

owed the Legislature by the judicial branch in selection of sanctions "to assure the faithful and honest discharge of the duties of public employees." The narrowness of this holding was emphasized by the Court's extensive discussion, *id.*, at 752, of the ways in which the job-related misconduct addressed by Government Code Section 7522.72 was different from the crimes of moral turpitude unmoored from the public employee's public duties found to be an insufficient basis for benefit forfeiture in *Wallace v. Fresno* (1954) 42 Cal.2d 180. Moreover, review has been granted in *Hipsher* and whatever the merits of its ultimate holding on the constitutionality of Government Code Section 7522.72, for the reasons set forth at pp. 16-26, above, *Amici* believe that *Hipsher* was incorrect in relying on *Marin Assn. of Public Employees v. Marin County Employees' Retirement Assn.* (2016) 2 Cal.App.5th 674, in its construction of *Allen II*.[31]

---

appointee will perform his duties conscientiously and faithfully" and that this assumption provides "helpful guidance as to whether a public employee is categorically entitled to a full pension regardless of misconduct ...").

[31] The ultimate merits of Government Code Section 7522.72 are beyond the scope of this brief, but *Amici* note that the statute's constitutionality could very well turn on the resolution of the issue of the reasonable expectations of those engaging in job-related criminal misconduct. *See* Section A(1)(b), above; *see also* 5 U.S.C. § 8312 (so-called "Hiss Act" under which federal employees forfeit retirement annuities if convicted of certain crimes).

4. Limited Emergency Exception

Contrary to the State's contention, [State Opening Brief, at p. 44-45], *Home Building & Loan Assn. v. Blaisdell* (*Blaisdell*) (1934) 290 U.S. 398, does not stand for the proposition that an emergency is, in itself, ***necessarily*** a sufficient basis for a contractual impairment without any offsetting benefit. Rather, in *Blaisdell*, the U.S. Supreme Court recognized that it is a valid exercise of reserved police powers for the legislature to impose a carefully tailored temporary and conditional impairment of contractual rights in the case of a grave emergency. The Court made repeated note of the fact that when it had approved such impairments, the impairment was temporary or temporally tied to the existence of the emergency and ordinarily accompanied by fair and reasonable compensation. *Id.* at 439-441.[32] However, it also made clear that this is an extremely limited exception, the application of which raises questions requiring "close examination" of both whether the emergency provides an adequate predicate "for the exercise of [state] power" and whether the law enacted in response to that emergency was closely tailored to the

[32] *Citing American Land Co. v. Zeiss* (1911) 219 U.S. 47, *Block v. Hirsh* (1921) 256 U.S. 135, *Marcus Brown Holding Co. v. Feldman* (1921) 256 U.S. 170, *Edgar A. Levy Leasing Co. v. Seigel* (1922) 258 U.S. 242.

Moreover, it is notable that neither *Blaisdell* nor any of the foregoing cases involved public employee pension benefits and the state's own financial interest implicated by a statute aimed at curtailing such benefits and, thus, none involved the heightened scrutiny such self-interested legislation necessarily brings with it.

emergency—tailoring that considers whether the underlying right has been abrogated and whether there is some sort of offsetting benefit or compensation. *Id.*, at 441 (noting that temporary emergency measures had been approved where "provision was made for reasonable compensation" during the time of the temporary modifications). The Court also stated that "[i]t is always open to judicial inquiry whether the emergency still exists upon which the continued operation of the law depends." *Id.*, at 442.

The narrowness of this exception is illustrated by *Blaisdell* itself. There, the emergency at issue was the economic dislocation brought about by the Great Depression. And even after finding that the emergency provided an adequate basis for the state to enact a temporary impairment of contractual remedies—there, a moratorium on foreclosures—the Court went on to ensure that the impairment was sufficiently narrowly tailored (the impairment was of a remedy, not the underlying right, and the unpaid amounts continued to accrue interest and the mortgagor during the extended period was required to pay the rental value of the premises). This is consistent with other cases demonstrating the exacting nature of the scrutiny that is required both (1) of the justification—*see* *Sonoma County*, *supra*, 23 Cal.3d at 311-12 (rejecting legislature's determination that the local government funding and fiscal crisis created by Proposition 13 justified impairment, in part because it failed to account for changed circumstances alleviating any crisis); *accord* *Brown v. Ferdon* (1936) 5

Cal.2d 226—and (2) of the tailoring of the statute to the justification—*see Treigle v. Acme Homestead Assn.* (1936) 297 U.S. 189 (invalidating statute that did not purport to deal with existing emergency and was neither temporary nor conditional, and that impaired contract rights of members).

### C. The Court Should Not Adopt the Test Proposed by the First Appellate District

While less extreme than the approach to vested benefits proposed by the Public Entity Parties, the test adopted by the Court of Appeal here is also inconsistent with the decades of case law and constitutional norms, discussed above, and this Court should decline to adopt it.

1. The Court of Appeal takes a radical new approach to vested benefits

In *Marin Assn. of Public Employees v. Marin County Employees' Retirement Assn.* (*Marin*) (2016) 2 Cal.App.5th 674, 697-700, a California court—for the first time—held that "There [i]s [n]o [a]bsolute [r]equirement [t]hat [e]limination or [r]eduction of an [a]nticipated [r]etirement [b]enefit '[m]ust' [b]e [c]ounterbalanced by a '[c]omparable [n]ew [b]enefit.'" *Id.*, at 697-700. According to the radical reimagining of Contract Clause jurisprudence posited by the *Marin* court, providing a comparable new advantage to offset an impairment of employees' constitutional rights is merely a suggestion—no matter how severe the impairment of employees' constitutional rights. The court reaches this conclusion by placing a tremendous amount of significance of the word

"***must***" in *Allen II*, compared with the initial formulation of this test in *Allen I*, which stated that "changes in a pension plan which result in disadvantage to employees ***should be accompanied*** by comparable new advantages." 45 Cal.2d at 131 (*emphasis added*). In reaching this conclusion, the First Appellate District posits that the Court in *Allen II* was simply sloppy in using the word "must," and its formulation should, therefore, be disregarded. Further, the *Marin* court suggested, treating an offset as mandatory would be inconsistent with the "essential attributes of sovereign power." *Id.*, at 706.

According to the *Marin* court, the real test should boil down to: (a) whether the modification bears "a material relation to the theory and successful operation of a pension system"—that is, whether there is some policy justification for the change—and (b) whether, after the modification, the employees' remaining pension benefit can still be described as "reasonable." *See id.*, at 700-09. According to *Marin*, the first element is satisfied by a government assertion of a need "to improve the solvency" of a pension system. *Id.*, at 704-05. The latter may apparently be satisfied by some kind of showing that the modification is "modest" in proportion with the remaining benefit. *Id.*, at 704.[33]

[33] Of what that showing must consist is unclear, as the *Marin* case never cleared the pleading stage, and, thus, the court made its assessment without the benefit of evidence. *See id.*, at 708.

The First Appellate District's decision at issue here both affirms and somewhat departs from the approach of the court in *Marin* and that suggested by many of the public entity parties to this litigation. The Court of Appeal accepted as "convincing" the *Marin* court's finding that impairments of vested contractual rights need not be offset through new comparable advantages. *Alameda County Deputy Sheriff's Assn.*, *supra*, 19 Cal.App.5th at 121. However, in place of a mandate, the lower court suggests that if comparable new advantages are not provided, "detrimental changes ... can only be justified by *compelling* evidence establishing that the required changes 'bear a material relation to the theory ... of a pension system.'" *Id.*, at 123 (*emphasis in original*).

2. The Court should decline to adopt the approach proposed by either *Marin* or the lower court here

The approaches proposed by *Marin* and the Court of Appeals here, and urged by the Public Entity Parties, should be rejected for a number of reasons.

First, as we have discussed, *supra* Section A, both of these approaches would be inconsistent with the constitutional norms underlying the vested benefit doctrine. While *Marin* asserts its holding is a necessary corollary of the "essential attributes of sovereign power," 2 Cal.App. at 700, this argument ignores the fact that the underlying rationale for the U.S.

and California Constitutions' Contracts Clauses is the conviction that protection of contractual obligations from sovereign impairment is an important "constitutional bulwark in favor of personal security and private rights." *See* The Federalist No. 44 (James Madison); *see also Fletcher v. Peck* (1810) 10 U.S. 87, 137-38. This is especially true where, as is true in the context of public employee pensions, the state has a self-interest in minimizing its own contractual obligations towards its present and future retirees in order to free its revenue for other uses. *See, e.g. United States Trust Co. v. New Jersey* (1977) 431 U.S. at 29 ("a State cannot refuse to meet its legitimate financial obligations simply because it would prefer to spend the money to promote the public good rather than the private welfare of its creditors").

This is not to say that the Contracts Clause is an unqualified restriction of sovereign power in all circumstances. As we have discussed, where the State reasonably determines that particular contract rights must be abrogated because it is the only or the most appropriate way to vindicate an important public purpose, it can always do so by passing an appropriately tailored statute that provides "just compensation" for any impairment—just as it would with respect to any other taking of property. *See United States Trust Co.*, *supra*, 431 U.S. at 19 n.16.

Further, as discussed *supra* Section A(2)(c), notwithstanding the attempts by the *Marin* court and the Court of Appeal here to characterize

*Allen II* as the outlier, the fact is that California courts have, for decades, consistently described—and treated—an offsetting benefit as mandatory. *See, e.g. Abbot*, *supra*, 50 Cal.2d at 454 ("[T]he substitution of a fixed for a fluctuating pension is not permissible unless accompanied by commensurate benefits..."); *Legislature v. Eu*, *supra*, 54 Cal.3d at 529 ("[T]he state cannot ... abandon that plan as to incumbent legislators without providing them comparable new benefits"); *see also Chapin v. City Commission of Fresno*, *supra*, 149 Cal.App.2d 40; *Betts*, *supra*, 21 Cal.3d 859. Far from mere incautious phrasing, *Allen II*'s formulation (modification resulting in disadvantage to employees "must be accompanied by comparable new advantages") is consistent with this long history. *Marin* is the true outlier.

The Court of Appeal decision here joins *Marin* in these mistakes. Specifically, the decision below would impose some limits upon a public employer's ability to impair employees' constitutional rights—requiring any impairment *not* accompanied by an offsetting new benefit "be justified by *compelling* evidence establishing that the required changes 'bear a material relation to the theory ... of a pension system.'" 19 Cal.App.5th at 123 (*emphasis in original*). However, in addition to being vague and unmoored to any previous analytical approach to this question, this test errs by treating offsetting benefits as optional—a position that is out of step with precedent requiring a constitutionally cognizable impairment be

justified by ***both*** a legally sufficient public purpose and by some kind of just compensation.

## IV. CONCLUSION

For the foregoing reasons, *Amici* OCMA and OCAA respectfully urge this Court to reverse the First Appellate District's ruling and to set forth in clear and unequivocal terms that wherever modifications of employee pension rights result in a constitutionally-cognizable impairment of individual employees' reasonable expectations, these modifications must be reasonable and necessary, which means that it must be offset by comparable new advantages inuring to the benefit of the adversely affected employees.

Respectfully submitted,

Dated: September 21, 2018

MARIANNE REINHOLD,
LAURENCE S. ZAKSON, and
AARON G. LAWRENCE, Members of
REICH, ADELL & CVITAN,
A Professional Law Corporation

By: *s/Laurence S. Zakson*
LAURENCE ZAKSON
Attorneys for *Amici Curiae*

## CERTIFICATE OF COMPLIANCE

Pursuant to California Rules of Court, Rule 8.204(c)(1) of the California Rules of Court, I hereby certify that this brief contains 10,765 words, including footnotes, produced using 13-point Times New Roman font, which is less than the total words permitted by the Rules of Court. In making this certification, I have relied on the word count of the computer program used to prepare the brief.

Respectfully submitted,

Dated: September 21, 2018

MARIANNE REINHOLD,
LAURENCE S. ZAKSON, and
AARON G. LAWRENCE, Members of
REICH, ADELL & CVITAN, A
Professional Law Corporation

By: *s/Laurence S. Zakson*
LAURENCE S. ZAKSON
Attorneys for *Amici Curiae*

**PROOF OF SERVICE**
(Code Civ. Proc. § 1013a(3))

STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

I am employed in the County of Los Angeles, State of California. I am over the age of 18 and not a party of the within action; my business address is 3550 Wilshire Boulevard, #2000, Los Angeles, CA 90010.

On September 21, 2018, I served the document described as **PROPOSED AMICUS CURIAE BRIEF OF ORANGE COUNTY ATTORNEYS ASSOCIATION AND ORANGE COUNTY MANAGERS ASSOCIATION IN SUPPORT OF PETITIONERS** on the persons below, as follows:

**PLEASE SEE ATTACHED SERVICE LIST**

■ **BY MAIL:** I deposited such envelope in the mail at Santa Ana, California. The envelope was mailed with postage thereon fully prepaid. I am readily familiar with the firm's practice of collection and processing correspondence for mailing. It is deposited with the U.S. postal service on that same day in the ordinary course of business. I am aware that on motion of party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after date of deposit for mailing an affidavit.

☐ **BY FAX:** I sent such document by use of facsimile machine telephone number (213) 386-5583. The facsimile cover sheet and confirmation are attached hereto indicating the recipient's facsimile number and time of transmission pursuant to California Rules of Court Rule 2008(e). The facsimile machine I used complied with California Rules of Court Rule 2003(3) and no error was reported by the machine.

☐ **BY PERSONAL SERVICE:** I placed the above document in a sealed envelope. I caused said envelope to be delivered by hand to the above addressee.

☐ **BY EMAIL:** I caused to be sent such document by use of email to the email addressee(s) above. Such document was scanned and emailed to such recipient.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed on September 21, 2018, at Los Angeles, California.

*s/Laurence S. Zakson*

**SERVICE LIST**

***Alameda County Deputy Sheriffs' Association, et al. v. Alameda County Employees' Retirement Assn., et al.***

**Case No. S247095**

| | |
|---|---|
| David E. Mastagni<br>Issac Sean Stevens<br>Mastagni, Holstedt Amick, Miller & Johnsen, APC<br>1912 I Street<br>Sacramento, CA 95811 | Attorneys for Plaintiffs and Appellants Alameda County Deputy Sheriff's Association, Jon Rudolph, James D. Nelson, Darlene Hornsby, Robert Brock and Rocky Medeiros<br><br>davidm@mastagnicom<br>istevens@mastagni.com |
| Ann I. Yen<br>Weinberg, Roger & Rosenfeld<br>1001 Marina Village Parkway, Suite 200<br><br>Alameda, CA 94501-1091 | Attorney for Intervenors and Appellants Service Employees International Union, Local 1021; Amy Dooha; Building Trades Council of Alameda County; and Mike Harteau<br><br>ayen@unioncounsel.net |
| Peter Warren Saltzman<br>Arthur Liou Leonard Carder LLP<br>1330 Broadway<br>Suite 1450<br>Oakland, CA 94612 | Attorney for Interveners and Appellants Alameda County Management Employees' Association; Kurt Von Savoy; and International Federation of Professional and Technical Engineers, Local 21<br><br>psaltzman@leonardcarder.com |

| | |
|---|---|
| Robert Bonsall<br>Beeson Tayer & Bodine<br>520 Capitol Mall, Suite 300<br>Sacramento, CA 95814 | Attorneys for Interveners and Appellants<br>Teamsters Local 856; Hasani Tabari; Daniel Lister; Locals 512 and 2700 of the American Federation of State, County and Municipal Employees AFL-CIO<br><br>rbonsall@beesontayer.com |
| Rockne Anthony Lucia Timothy Keith<br>Talbot Rains, Lucia & Stern PC<br>2300 Contra Costa Blvd, Suite 500<br>Pleasant Hill, CA 94523 | Attorneys for Plaintiffs and Appellants Contra Costa County Deputy Sheriff's Association; Ken Westermann; Sean Fawell; and Intervener and Appellant Probation Peace Officers Association of Contra Costa County<br><br>rlucia@rlslawyers.com;<br>ttalbot@r1slawyers.com |
| W. David Holsberry<br>McCracken, Stemerman & Holsberry, LLP<br>595 Market Street, Suite 1400<br>San Francisco, CA 94105 | Attorneys for Plaintiff and Appellant United Professional Fire Fighters of Contra Costa County, Local 1230<br><br>wdh@msh.com |
| William Ira Corman<br>Bogatin Corman & Gold<br>1330 Broadway, Suite 800<br>Oakland, CA 94612 | Attorney for Intervener and Appellant Physicians' and Dentists' Organization of Contra Costa<br><br>wcorman@bcgattorneys.com |
| Christopher E. Platten<br>Wylie, McBride, Platten & Renner<br>2125 Canoas Garden Avenue<br>Suite 120<br>San Jose, CA 95125 | Attorneys for Interveners and Appellants International Association of Fire Fighters Local 3546; Michael Mohun; David Atkins; Contra Costa County Deputy District Attorneys Association; Paul Graves; and Gary Koppel<br><br>cplatten@wmprlaw.com |

| | |
|---|---|
| Vincent A. Harrington, Jr. Weinberg Roger & Rosenfeld<br>1001 Marina Village Parkway Suite 200<br>Alameda, CA 94501-1091 | Attorney for Interveners and Appellants Service Employees International Union, Local 1021; and Peter Barka<br><br>vharrington@unioncounsel.net |
| Arthur Wei-Wei Liou Leonard Carder<br>1330 Broadway, Suite 1450<br>Oakland, CA 94612 | Attorneys for Interveners and Appellants Public Employees Union, Local No. 1; International Federation of Professional and Technical Engineers, Local 21; David M. Roney; Peter J. Ellis; and Susan Guest<br><br>aliou@leonardcarder.com |
| Andrew Harold<br>Baker Beason Tayer & Bodine<br>483 Ninth Street, 2nd Floor<br>Oakland, CA 94607 | Attorneys for Interveners and Appellants Locals 512 and 2700 of the American Federation of State, County and Municipal Employees AFL-CIO<br><br>abaker@beesontayer.com |
| Robert James Bezemek<br>1611 Telegraph Avenue Suite 936<br>Oakland, CA 94612 | Attorney for Intervener and Appellant United Chief Officers Association<br><br>rjbezemek@bezemeklaw.com |
| Alameda County Medical Center<br>Wright Lassiter, III, CEO,<br>Alameda County Medical Center<br>1411 East 31st Street<br>Oakland, CA 94602 | Interested Entity/Party — Pro Per<br><br>wlassiter@acmedctr.com |
| First 5, Alameda County Children & Families Commission<br>Mark Friedman, CEO<br>First 5<br>1115 Atlantic Avenue<br>Alameda, CA 94501 | Intervener and Appellant — Pro Per<br><br>mark.friedman@first5eec.org |

| | |
|---|---|
| Brian Edward<br>Washington Office of County Counsel<br>1221 Oak Street, Suite 450<br>Oakland, CA 94612-4296 | Attorney for Intervener and Appellant<br>Housing Authority of County of Alameda<br><br>brian.washington@acgov.org |
| Peter A. Krause<br>Rei R. Onishi<br>Office of Governor Edmund G. Brown Jr.<br>State Capitol, Suite 1173<br>Sacramento, CA 95814 | Attorneys for Intervener and Respondent<br>State of California<br><br>Rei.Onishi@gov.ca.gov |
| Rod A. Attebery<br>Neumiller & Beardslee<br>509 West Weber Avenue, 5th Floor<br>P.O. Box 20<br>Stockton, CA 95201-3020 | Attorney for Intervener and Appellant<br>Livermore Area Recreation and Park District<br><br>rattebery@neumiller.com |
| Alameda County Office of Education<br>Sheila Jordan, Superintendent of Schools<br>313 W. Winton Avenue<br>Hayward, CA 94544 | Intervener and Appellant<br><br>sjordan@acoe.org |
| Superior Court of California Patricia Sweeten, Court Executive Officer<br>1225 Fallon Street, Room 209<br>Oakland, CA 94612 | Intervener and Appellant<br><br>psweeten@alameda.courts.ca.gov |
| Andrea Lynne Weddle Office of the County Counsel Alameda County<br>1221 Oak Street, Suite 450<br>Oakland, CA 94612 | Attorney for Intervener and Appellant<br>County of Alameda<br><br>andrea.weddle@acgov.org |
| Richard Deimendo PioRoda Meyers, Nave, Riback, Silver & Wilson<br>555 12th Street, Suite 1500<br>Oakland, CA 94607 | Attorney for Intervener and Appellant<br>Rodeo-Hercules Fire Protection District<br><br>rpioroda@meyersnave.com |

| | |
|---|---|
| David J. Larsen<br>Silver & Wright LLP<br>5179 Lone Treet Way<br>Antioch, CA 94531 | Attorney for Intervener and Appellant Bethel Island Municipal Improvement District<br><br>dlarsen@dlarsenlaw.com |
| Thomas Lawrence Geiger<br>Contra Costs County Counsel<br>651 Pine Street, 9th Floor<br>Martinez, CA 94553-1229 | Attorney for Interveners and Appellants Contra Costa County; Contra Costa County Fire Protection District; Housing Authority of the County of Contra Costa; In-Home Supportive Services Public Authority; Contra Costa Local Agency Formation Commission; and Children and Families First Commission<br><br>thomas.geer@cc.cccounty.us |
| Linda Ross<br>Renne Sloan Holtzman Sakai<br>1220 7th Street, Suite 300<br>Berkeley, CA 94710 | Attorney for Real Party in Interest and Respondent Central Contra Costa Sanitary District<br><br>lross@publiclawgroup.corn |
| Lyle R. Nishimi<br>Judicial Council of California<br>455 Golden Gate Avenue<br>San Francisco, CA 94102 | Attorney for Intervener and Appellant Superior Court of California County of Contra Costa<br><br>lyle.nishimi(@jud.ca.gov |
| Diane Marie Hanson<br>Hanson Bridgett LLP<br>425 Market Street, 26th Floor<br>San Francisco, CA 94105 | Attorneys for Intervener and Appellant East Contra Costa County Fire Protection District<br><br>domalley@hansonbridgett.corn |
| Bryon, Brentwood, Knightsen Union Cemetery District<br>Barbara Fee<br>P.O. Box 551<br>Brentwood, CA 94513 | Intervener and Appellant<br><br>ucemetery@yahoo.com |

| | |
|---|---|
| Carl P. Nelson<br>Bold, Polisner, Maddow, Nelson & Judson, PC<br>500 Ygnacio Valley Road,<br>Suite 325<br>Walnut Creek, CA 94596-3840 | Attorney for Intervenor & Appellant Rodeo Sanitary District<br><br>cpanelson@bpmnj.com |
| William Dale Ross<br>520 South Grand Avenue, Suite 300<br>Los Angeles, CA 90071-2610 | Attorney for Intervener and Appellant San Ramon Valley Fire Protection District<br><br>wross@lawross.com |
| Martin Thomas Snyder Snyder, Cornelius & Hunter<br>399 Taylor Blvd., Suite 106<br>Pleasant Hill, CA 94523 | Attorney for Intervener and Appellant Contra Costa Mosquito & Vector Control District<br><br>mtsnyder@schlawfirm.com |
| Moraga/Orinda Fire Protection District<br>Sue Casey<br>33 Orinda Way<br>Orinda, CA 94563 | Intervener and Appellant<br><br>scasey@mofd.org |
| Robert Bonsai<br>Beeson layer & Bodine<br>520 Capitol Mall, Suite 300<br>Sacramento, CA 95814 | Attorneys for Plaintiff and Respondent American Federation of State County and Municipal Employees Local 2703, AFL-CIO; and Plaintiffs and Appellants Jeffrey Miller, Sandra Gonzalez-Diaz, and Merced County Sheriff's Assoc., an Affiliate of International Brotherhood of Teamsters, Local 856<br><br>rbonsall@beesontayer.com |

| | |
|---|---|
| Harvey L. Leiderman<br>May-tak Chin<br>Reed Smith LLP<br>101 Second Street<br>Suite 1800<br>San Francisco, CA 94105 | Attorneys for Respondents Alameda County Employees' Retirement Association and its Board of Retirement<br><br>hleiderman@reedsmith.com |
| Harvey L. Leiderman<br>May-tak Chin<br>Reed Smith LLP<br>101 Second Street<br>Suite 1800<br>San Francisco, CA 94105 | Attorneys for Respondents Contra Costa County Employees' Retirement Association and its Board of Retirement<br><br>hleiderman@reedsmith.com |
| Ashley K. Dunning<br>Nossaman LLP<br>50 California Street<br>34th Floor<br>San Francisco, CA 94111 | Attorney for Defendants and Respondents Merced County Employees' Retirement Association and its Board of Retirement<br><br>adunning@,nossaman.com |
| Clerk of the Court of Appeal<br>First District Court of Appeal<br>350 McAllister Street<br>San Francisco, CA 94102 | By U.S. Mail only |
| Clerk of the Superior Court<br>Contra Costa County Superior Court<br>725 Court Street<br>Martinez, CA 94553 | By U.S. Mail only |
| Clerk of the Superior Court<br>Alameda County Superior Court<br>René C. Davidson Courthouse<br>1225 Fallon Street<br>Oakland, California 94612 | By U.S. Mail only |

| | |
|---|---|
| Clerk of the Superior Court<br>Merced County Superior Court<br>2260 N Street<br>Merced, CA 95340-3744 | By U.S. Mail only |